

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA**

**ARNOLD MACHLES, AS EXECUTOR OF
THE ESTATE OF CHARLES H. KOONS,**

Case No. 17-cv-1015 (WB)

Plaintiff,

v.

**McCABE, WEISBERG & CONWAY, P.C.,
et al.,**

Defendants.

**ANSWER AND DEFENSES OF THE McCabe Firm TO
THE CIVIL COMPLAINT OF ARNOLD MACHLES, AS EXECUTOR
OF THE ESTATE OF CHARLES H. KOONS**

Defendant, McCabe Weisberg & Conway, P.C. (now known as McCabe, Weisberg & Conway, LLC, and hereinafter, the “McCabe Firm”), hereby responds to the civil complaint (the “Complaint”) of Arnold Machles, Executor of the Estate of Charles H. Koons (“Plaintiff”), and alleges as follows:

Response to allegations under the heading “I. PRELIMINARY STATEMENT”

1. Admitted in part, denied as stated in part, and denied in part. It is admitted that Plaintiff seeks the relief outlined in paragraph 1 of the Complaint. It is specifically denied that Plaintiff is entitled to such relief from the McCabe Firm. By way of further answer, certain allegations contained in paragraph 1 of the Complaint state conclusions of law to which no reply is required, and therefore, they are denied. By way of further answer, the “statement” made by the Plaintiff in paragraph 1 of the Complaint is an improper pleading and not contemplated by Federal Rules of Civil Procedure 8(a), (e) and 10(b), and therefore, it is denied.

Response to allegations under the heading “II. JURISDICTION AND VENUE”

2. Denied as stated. It is admitted that this Court possesses the requisite jurisdiction over this action.
3. Denied as stated. It is admitted that this action is properly venued in the Eastern District of Pennsylvania.

Response to allegations under the heading “III. PARTIES”

4. Admitted upon information and belief.
5. Denied as stated. It is admitted that the McCabe Firm is now incorporated as McCabe, Weisberg & Conway, LLC in Pennsylvania, and has a primary place of business at 123 South Broad Street, Suite 1400, Philadelphia, PA 19109.
6. Denied. The allegations contained in this paragraph of the Complaint are directed to parties other than the McCabe Firm, no response is expected from the McCabe Firm, and therefore, the allegations are denied. By way of further answer, the McCabe Firm lacks information and knowledge sufficient to form a belief as to the truth of the allegations contained in this paragraph of the Complaint, and therefore, they are denied.

Response to allegations under the heading “IV. OPERATIVE FACTS”

7. The McCabe Firm incorporates here all of its allegations above as if restated in their entirety.
8. Denied. The McCabe Firm lacks information and knowledge sufficient to form a belief as to the truth of the allegations contained in this paragraph of the Complaint, and therefore, they are denied.
9. Admitted upon information and belief.
10. Denied. The allegations contained in this paragraph of the Complaint attempt to

characterize a writing that speaks for itself, and therefore, they are denied.

11. Denied as stated in part, denied in part. It is admitted that the McCabe Firm, on behalf of its client, CIT Bank, N.A. (the “Foreclosure Plaintiff”), filed a foreclosure action against the Plaintiff on March 8, 2016. The remaining allegations contained in this paragraph of the Complaint are denied. By way of further answer, the allegations contained in this paragraph of the Complaint attempt to characterize a writing that speaks for itself, and therefore, they are denied.

12. Denied. The allegations contained in this paragraph of the Complaint attempt to characterize a writing that speaks for itself, and therefore, they are denied.

13. Denied. The allegations contained in this paragraph of the Complaint attempt to characterize a writing that speaks for itself, and therefore, they are denied.

14. Denied. The allegations contained in this paragraph of the Complaint attempt to characterize a writing that speaks for itself, and therefore, they are denied.

15. Denied. The allegations contained in this paragraph of the Complaint attempt to characterize a writing that speaks for itself, and therefore, they are denied.

16. Denied. The allegations contained in this paragraph of the Complaint attempt to characterize a writing that speaks for itself, and therefore, they are denied.

17. Denied. The allegations contained in this paragraph of the Complaint attempt to characterize a writing that speaks for itself, and therefore, they are denied.

18. Denied. The allegations contained in this paragraph of the Complaint attempt to characterize a writing that speaks for itself, and therefore, they are denied.

19. Denied. By way of further answer, the allegations contained in this paragraph of the Complaint advance conclusions of law to which no reply is required, and therefore, they are denied.

20. Denied. The allegations contained in this paragraph of the Complaint advance conclusions of law to which no reply is required, and therefore, they are denied.

21. Denied. The allegations contained in this paragraph of the Complaint advance conclusions of law to which no reply is required, and therefore, they are denied.

22. Denied. The allegations contained in this paragraph of the Complaint advance conclusions of law to which no reply is required, and therefore, they are denied.

23. Denied. By way of further answer, the McCabe Firm lacks information and knowledge sufficient to form a belief as to the truth of the allegations contained in this paragraph of the Complaint, and therefore, they are denied.

24. Denied as stated in part, denied in part. It is admitted that the McCabe Firm was retained to represent the Foreclosure Plaintiff in the state foreclosure filed in the Pennsylvania Court of Common Pleas, Delaware County, Docket no. 2016-002141. The McCabe Firm lacks information and knowledge sufficient to form an understanding of what Plaintiff means by “all times relevant” as used in this paragraph of the Complaint, and therefore, the allegations contained in this paragraph are denied. The remaining allegations contained in this paragraph of the Complaint are denied.

25. Denied in part, admitted in part. The McCabe Firm lacks information and knowledge sufficient to form an understanding of what Plaintiff means by “all times relevant” as used in this paragraph of the Complaint, and therefore, the allegations contained in this paragraph are denied. The remaining allegations contained in this paragraph of the Complaint are admitted.

Response to allegations under the heading “V. CLAIMS FOR RELIEF COUNT I – VIOLATION OF FDCPA”

26. The McCabe Firm incorporates here all of its allegations above as if restated in their

entirety.

27. Denied. The allegations contained in this paragraph of the Complaint advance conclusions of law to which no reply is required, and therefore, they are denied.

28. Denied as stated in part, denied in part. It is denied that the McCabe Firm “obtained” the “debt that is the subject of this action... .” By way of further answer, the remaining allegations contained in this paragraph of the Complaint are directed to parties other than the McCabe Firm, no response is expected from the McCabe Firm, and therefore, the allegations are denied. By way of further answer, the allegations contained in this paragraph of the Complaint advance conclusions of law to which no reply is required, and therefore, they are denied.

29. Denied. The allegations contained in this paragraph of the Complaint advance conclusions of law to which no reply is required, and therefore, they are denied.

30. Denied. The allegations contained in this paragraph of the Complaint are directed to parties other than the McCabe Firm, no response is expected from the McCabe Firm, and therefore, the allegations are denied.

31. Denied. The allegations contained in this paragraph advance conclusions of law to which no reply is required, and therefore, they are denied.

32. Denied. The allegations contained in this paragraph of the Complaint advance conclusions of law to which no reply is required, and therefore, they are denied.

Response to allegations under the heading “COUNT II – VIOLATION OF FCEUA”

33. The McCabe Firm incorporates here all of its allegations above as if restated in their entirety.

34. Denied. The allegations contained in this paragraph of the Complaint are directed to parties other than the McCabe Firm, no response is expected from the McCabe Firm, and therefore, the

allegations are denied. By way of further answer, the McCabe Firm lacks information and knowledge sufficient to form a belief as to the truth of the allegations contained in this paragraph of the Complaint, and therefore, they are denied. By way of further answer, the allegations contained in this paragraph of the Complaint advance conclusions of law to which no reply is required, and therefore, they are denied.

35. Denied. The allegations contained in this paragraph of the Complaint are directed to parties other than the McCabe Firm, no response is expected from the McCabe Firm, and therefore, the allegations are denied. By way of further answer, the McCabe Firm lacks information and knowledge sufficient to form a belief as to the truth of the allegations contained in this paragraph of the Complaint, and therefore, they are denied. By way of further answer, the allegations contained in this paragraph of the Complaint advance conclusions of law to which no reply is required, and therefore, they are denied.

36. Denied. The allegations contained in this paragraph of the Complaint are directed to parties other than the McCabe Firm, no response is expected from the McCabe Firm, and therefore, the allegations are denied. By way of further answer, the McCabe Firm lacks information and knowledge sufficient to form a belief as to the truth of the allegations contained in this paragraph of the Complaint, and therefore, they are denied. By way of further answer, the allegations contained in this paragraph of the Complaint advance conclusions of law to which no reply is required, and therefore, they are denied.

37. Denied. The allegations contained in this paragraph of the Complaint are directed to parties other than the McCabe Firm, no response is expected from the McCabe Firm, and therefore, the allegations are denied. By way of further answer, the McCabe Firm lacks information and knowledge sufficient to form a belief as to the truth of the allegations contained in this paragraph

of the Complaint, and therefore, they are denied. By way of further answer, the allegations contained in this paragraph of the Complaint advance conclusions of law to which no reply is required, and therefore, they are denied.

38. Denied. The allegations contained in this paragraph of the Complaint are directed to parties other than the McCabe Firm, no response is expected from the McCabe Firm, and therefore, the allegations are denied. By way of further answer, the McCabe Firm lacks information and knowledge sufficient to form a belief as to the truth of the allegations contained in this paragraph of the Complaint, and therefore, they are denied. By way of further answer, the allegations contained in this paragraph of the Complaint advance conclusions of law to which no reply is required, and therefore, they are denied.

39. Denied. The allegations contained in this paragraph of the Complaint are directed to parties other than the McCabe Firm, no response is expected from the McCabe Firm, and therefore, the allegations are denied. By way of further answer, the McCabe Firm lacks information and knowledge sufficient to form a belief as to the truth of the allegations contained in this paragraph of the Complaint, and therefore, they are denied. By way of further answer, the allegations contained in this paragraph of the Complaint advance conclusions of law to which no reply is required, and therefore, they are denied.

Response to allegations under the heading “COUNT III – VIOLATION OF UTPCPL”

40. The McCabe Firm incorporates here all of its allegations above as if restated in their entirety.

41. Denied. The allegations contained in this paragraph of the Complaint advance conclusions of law to which no reply is required, and therefore, they are denied.

42. Denied as to the McCabe Firm. The remaining allegations contained in this paragraph of

the Complaint are directed to parties other than the McCabe Firm, no response is expected from the McCabe Firm, and therefore, the allegations are denied.

43. Denied. The allegations contained in this paragraph of the Complaint advance conclusions of law to which no reply is required, and therefore, they are denied.

44. Denied as to the McCabe Firm. The remaining allegations contained in this paragraph of the Complaint are directed to parties other than the McCabe Firm, no response is expected from the McCabe Firm, and therefore, the allegations are denied.

45. Denied as to the McCabe Firm. The remaining allegations contained in this paragraph of the Complaint are directed to parties other than the McCabe Firm, no response is expected from the McCabe Firm, and therefore, the allegations are denied.

46. Denied as to the McCabe Firm. The remaining allegations contained in this paragraph of the Complaint are directed to parties other than the McCabe Firm, no response is expected from the McCabe Firm, and therefore, the allegations are denied.

47. Denied as to the McCabe Firm. The remaining allegations contained in this paragraph of the Complaint are directed to parties other than the McCabe Firm, no response is expected from the McCabe Firm, and therefore, the allegations are denied.

48. Denied. The allegations contained in this paragraph of the Complaint advance conclusions of law to which no reply is required, and therefore, they are denied.

49. Denied. The allegations contained in this paragraph of the Complaint advance conclusions of law to which no reply is required, and therefore, they are denied.

50. Denied. The allegations contained in this paragraph of the Complaint advance conclusions of law to which no reply is required, and therefore, they are denied.

Response to allegations under the heading “VI. [sic] PRAYER FOR RELIEF”

51. Denied. It is specifically denied that Plaintiff is entitled to any relief on his Complaint.

WHEREFORE, the McCabe Firm respectfully request that Plaintiff take nothing on his Complaint, that judgment be entered in favor of the McCabe Firm, and for such further relief as this Honorable Court deems appropriate.

AFFIRMATIVE AND OTHER DEFENSES

DEFENSE ONE

Plaintiff has failed to demonstrate that the McCabe Firm violated the Fair Debt Collection Practices Act.

DEFENSE TWO

The Plaintiff has failed to properly allege all facts necessary to support his claims.

DEFENSE THREE

The McCabe Firm's alleged violation(s) of the FDCPA, if any, were unintentional and resulted from a bona fide error despite procedures reasonably adapted to avoid such errors.

DEFENSE FOUR

The McCabe Firm's alleged violation(s) of the FDCPA, if any, were isolated events that were not and are not reoccurring.

DEFENSE FIVE

The McCabe Firm' alleged violation(s) of the FDCPA, if any, were not material.

DEFENSE SIX

The alleged misrepresentations of the McCabe Firm constitute statements of law, not allegations of fact.

DEFENSE SEVEN

A response to a legal conclusion is, itself, a legal conclusion and not a statement of fact.

DEFENSE EIGHT

The alleged misrepresentations made by the McCabe Firm would not be false, misleading or deceptive to the least sophisticated consumer.

DEFENSE NINE

The alleged misrepresentations made by the McCabe Firm would not be false, misleading or deceptive to a competent attorney.

DEFENSE TEN

The Plaintiff has suffered no actual damages.

DEFENSE ELEVEN

If Plaintiff is entitled to statutory damages under the FDCPA, he has prayed for such damages in an amount exceeding that to which he should be awarded.

DEFENSE TWELVE

Plaintiffs have failed to allege fraudulent or deceptive acts by the McCabe Firm, or in the alternative, have failed to do so with the requisite specificity.

DEFENSE THIRTEEN

The UTPCPL does not regulate attorneys involved in the practice of law.

DEFENSE FOURTEEN

The conduct of the McCabe Firm identified in the Complaint constitutes the practice of law.

DEFENSE FIFTEEN

The Plaintiff has failed to allege reliance on any misrepresentation allegedly made by the

McCabe Firm.

DEFENSE SIXTEEN

The Plaintiff has failed to allege any ascertainable loss as a result of the McCabe Firm's alleged conduct.

DEFENSE SEVENTEEN

The Plaintiff has failed to allege that it purchased consumer goods and services from the McCabe Firm.

DEFENSE EIGHTEEN

Plaintiff is not entitled to treble damages.

DEFENSE NINETEEN

Plaintiff's claims are barred, in whole or part, by the applicable statutes of limitation and the doctrine of laches.

DEFENSE TWENTY

Plaintiff's claims are barred, in whole or part, by the doctrines of waiver, estoppel and preclusion.

DEFENSE TWENTY-ONE

The Complaint fails to state claims upon which relief may be granted.

DEFENSE TWENTY-TWO

The McCabe Defendants reserve their right to raise additional defenses that are learned or developed through the course of discovery in this matter.

Dated: Philadelphia, PA
November 27, 2017

Respectfully submitted,
McCABE, WEISBERG & CONWAY, LLC
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By: /s/ Joseph F. Riga
Joseph F. Riga

Counsel for the McCabe Firm